

September 20, 2005

The Honorable Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
Office of Inspector General
330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Levinson:

The Wall Street Journal, in an August 16, 2005 article, examined allegations that universities misuse federal grant money received from the National Institutes of Health (NIH). Some of these allegations have resulted in recent multi-million dollar settlements between NIH university grantees and the U.S. Department of Justice. Some of the misconduct alleged in these settled cases involved the billing of the NIH for salaries and expenses unrelated to the NIH grants. Prior to publication of the article, the Committee on Energy and Commerce separately received allegations involving a university misusing NIH grant money to unreasonably compensate graduate research assistants. In light of concerns about possible misuse of NIH grant funds, and your office's jurisdiction and past activity in this area, we believe these allegations should be further examined.

We request that the Office of the Inspector General (OIG) at the Department of Health and Human Services (HHS) determine if federal taxpayer dollars have been used by state universities to compensate graduate research assistants for tuition remission rather than for their actual work on programs funded by the NIH. We also request, that to the extent such use of funds is substantiated, the OIG determine if such compensation practices violate any federal law, regulation, or policy, or are an inappropriate use of taxpayer dollars.

Universities conduct a great deal of biomedical research funded by the NIH, and often employ graduate students to assist with the research. The Office of Management and Budget (OMB) permits graduate student research assistants to be reimbursed "reasonable compensation for work performed," in the form of salaries and tuition remission under OMB Circular A-21 ("OMB Circular"). An October 26, 1994 OIG report entitled, "Audit of Graduate Student Compensation at Selected Universities," found that three particular universities charged more

than \$5.7 million in unreasonable compensation. The report further concluded that the OMB Circular provided “inexact guidance and the selected universities used a liberal interpretation of reasonableness . . . [which] resulted in less than prudent actions.” As a result of this report, in 1996 the NIH published an explicit statement that it is unreasonable to charge more for a graduate student (salary plus tuition remission) than the equivalent compensation of a first-year postdoctoral scientist performing comparable work and effort at the same institution. In 1999, at the request of this Committee, the Government Accountability Office (GAO) examined compensation paid to graduate students at the University of California (“University”) under Federal research grants. The GAO found that the university charged federally sponsored research \$19.3 million for student compensation in excess of what it paid first-level postdoctoral researchers at a comparable level of work and effort. However, because of a pending lawsuit related to these issues, the GAO did not think it appropriate to reach a conclusion on whether these practices were inconsistent with the OMB Circular.

The Committee staff has recently learned that these compensation practices not only may have continued, but that the University has a salary scale in which it can bill the taxpayer for student compensation at rates approaching six times the salary of postdoctoral researchers. According to the salary scale information effective October 1, 2002, posted on the University of California – Davis website, resident and non-resident graduate student researchers can receive salaries and tuition remissions equivalent to hourly rates of \$75 to \$89, which is roughly proportional to an annual salary range of \$150,000 to \$180,000. Nonresident students’ compensation would be generally higher since they are charged much higher non-resident tuition rates and would receive full tuition remission from the university. By contrast, the starting salary for a post-doctoral scholar at the University is a little more than \$31,000. Such a wide discrepancy between salary rates for current graduate students and those who have attained their doctorates raises questions of unreasonableness, particularly since both contribute similar amounts of work, time, and effort. Additionally, universities use tuition remission as a recruitment tool for foreign students, who may be tax exempt from such payments.

The alleged diversion of NIH funds for tuition remission raises serious public policy concerns of waste, effectiveness, and integrity of taxpayer-supported research programs. Thank you in advance for your consideration of this request. If you have any questions, please contact Alan Slobodin of the Committee staff at (202) 225-2927.

Sincerely,

Joe Barton
Chairman

Ed Whitfield
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable John D. Dingell, Ranking Member
The Honorable Bart Stupak, Ranking Member
Subcommittee on Oversight and Investigations